

REMARKS

Reconsideration of the application, as amended, is respectfully requested, in view of the following remarks. New claims 28 and 29 have been added in an attempt to distinguish further the cited art.

Claims 24 and others are rejected under Section 112. The Office indicates that as recited it is unclear whether the *Lactobacillus* bacteria in claim 24 are viable or non-viable. Claim 24 recites that it is a method for producing a food product comprising probiotic *Lactobacillus* bacteria which have been rendered non-viable. So, a food product made according to the invention will have *Lactobacillus* bacteria which have been rendered non-viable. The method is recited to comprise adding probiotic *Lactobacillus* bacteria into the food product. This clause does not indicate the status of the bacteria, but the next clause recites that the bacteria is rendered non-viable before or after addition to the food product. Therefore, it is clear that the bacteria which are added can be viable and they can be non-viable. The claim also recites that no substantial fermentation of the food product by the *Lactobacillus* bacteria will take place by the non-viable bacteria. The status of the bacteria during the process seems clear from the above and from claim 24. If the Office requires further clarification, applicant would appreciate it if the Office would be very specific as to any remaining issue.

Claim 24 recites "adding probiotic *Lactobacillus* bacteria into the food product, said bacteria being rendered non-viable before or after addition to the food product by means of pasteurization." It is not apparent how Meister et al. can be said to satisfy this element when their object is to obtain survival of at least 1% to 10% or more of the microorganisms after drying (column 2, second full paragraph). Moreover, the 1% survival is "considered to be totally acceptable" to Meister et al. given that the liquid

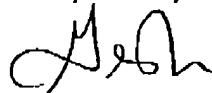
mixture initially contains 10^8 cfu's (col 5, next to last paragraph). Example 6 (<0.1 % viability after drying--Table 2) is a fermented milk prepared as described in Examples 1 to 4. It is respectfully requested that the rejections based on Meister et al. be withdrawn.

Klaver et al. US Patent No. 5,409,718 use destroyed lactobacillus as a substrate for streptococcus. The Office points in its 9/21/07 and 2/23/07 office actions to no teaching by Klaver et al. that the lactobacillus will remain in the food product after serving as a substrate for the streptococcus. Therefore, it is submitted that Klaver et al. neither anticipates nor teaches the present invention and it is respectfully requested that the rejections based on Klaver et al. be withdrawn.

Since the rejected independent claims are not unpatentable for the reasons given above, the dependant claims should also be allowed.

In view of the foregoing, it is respectfully requested that the application be allowed.

Respectfully submitted,



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